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SERVICE DATE – JANUARY 22, 2002

## SURFACE TRANSPORTATION BOARD

### DECISION

STB Finance Docket No. 34160 (Sub-No. 1)

#### UNION PACIFIC RAILROAD COMPANY–TRACKAGE RIGHTS EXEMPTION–THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: January 11, 2002

By petition filed December 27, 2001, the Union Pacific Railroad Company (UP) requests that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 34160<sup>1</sup> to extend only until February 23, 2002.

According to UP, the temporary trackage rights arrangement exempted in STB Finance Docket No. 34160 is necessary because UP will be performing maintenance and repairs on its main line and will be utilizing the trackage rights over BNSF's line as an alternate route for UP's traffic while the work is being performed. However, UP states that it is only seeking, and BNSF is only willing to grant, temporary trackage rights over BNSF trackage during the period of maintenance activity on UP's line. UP maintains that, without approval of the temporary trackage rights, it is unlikely that any other arrangement can be reached to allow UP to operate over BNSF's line, and UP would face the possibility of severe operational problems on its main line.

### DISCUSSION AND CONCLUSIONS

Although UP and BNSF have expressly agreed on the term of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption normally remain effective indefinitely regardless of any durational contract provisions. Occasionally, trackage

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<sup>1</sup> On December 27, 2001, UP concurrently filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement (agreement) by The Burlington Northern and Santa Fe (BNSF) to grant temporary overhead trackage rights to UP over approximately 129 miles of BNSF's Ft. Worth Subdivision between BNSF milepost 6.1, near Ft. Worth, TX, and BNSF milepost 218.1, near Temple, TX. See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34160 (STB served Jan. 11, 2002). The agreement is scheduled to expire on February 23, 2002. The trackage rights operations under the exemption were scheduled to be consummated on or after January 3, 2002.

rights exemptions have been granted for a limited term rather than in perpetuity. See Central Montana Rail, Inc.—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34069 (Sub-No. 1) (STB served Dec. 14, 2001).

Under 49 U.S.C. 10502, we may exempt a person, class of persons, or a transaction or service, in whole or in part, when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

UP's temporary trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted and will have no adverse impact on shippers on the line as the trackage rights that are the subject of the exemption are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 34160 to expire on February 23, 2002.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the trackage rights described in STB Finance Docket No. 34160, as discussed above, to permit the trackage rights to expire on February 23, 2002.
2. Notice will be published in the Federal Register on January 22, 2002.
3. This decision is effective on February 21, 2002.
4. Petitions to stay must be filed by February 1, 2002. Petitions to reopen must be filed by February 11, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams  
Secretary